

## PATENT

Attorney Docket No. 101.0092-02000

Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Confirmation No.: 6591
Gary Karlin Michelson	)	
Serial No.: 10/669,287	)	Group Art Unit: 3738
Filed: September 24, 2003	)	Examiner: Thomas Barrett
For: EXPANDABLE PUSH-IN ARCUATE	)	
INTERBODY SPINAL FUSION IMPLANT	)	
WITH TAPERED CONFIGURATION	)	
DURING INSERTION	)	

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY TO OFFICE ACTION**

In reply to the Office Action dated June 29, 2004, the period for reply having been extended for three (3) months by a request for extension and fee payment filed concurrently herewith, the following remarks are submitted as follows:

In the Office Action, the Examiner rejected claims 1-96 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15, 18-40, 42-93, 97-100, 104, and 105 of U.S. Patent No. 6,709,458 (the "458 patent"). Applicant is submitting concurrently with this Amendment a Terminal Disclaimer of the terminal part of any patent granted in the present application which would extend beyond the expiration of Patent No. 6,709,458.

The Examiner provisionally rejected claims 1-9, 13, 33, 54-92, and 94-96 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 9, 11, 13-20, and 24-55 of Application No. 10/669,291 (the "291 application"), now U.S. Patent No. 6,793,679. Applicant respectfully traverses the provisional rejection. The '291 application is a divisional application of the '458 patent and was filed as a result of the Restriction Requirement of December 31, 2001 in the '458 patent (a copy of which is attached for the Examiner's convenience). The '291

Reply to Office Action 12-29-04.doc